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Attorneys for Defendant
GLOBAL PLATING, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SAN FRANCISCO BAYKEEPER, a public benefit non-profit corporation.

Case No. 3:21-cv-05412-SK

Plaintiff,
vs.

SUMMARY OF VALUE OF CASE FOR PROPORTIONALITY EVALUATION

GLOBAL PLATING, INC., a California corporation

Defendant

CASE MANAGEMENT AND PRETRIAL ORDER (DKT. 21)

1 Plaintiff San Francisco Baykeeper (“Baykeeper” or “Plaintiff”) and Defendant Global
 2 Plating, Inc. (“Global” or “Defendant”) (collectively the “Parties”) jointly provide the following
 3 information pursuant to the Court’s case management and pretrial order (Dkt. 21), which requests a
 4 summary of the value of the case, including a good faith assessment of damages, to assist in
 5 evaluating proportionality with respect to any discovery disputes.

6 **I. PLAINTIFF’S STATEMENT**

7 Damages are not available in citizen enforcement actions under the Clean Water Act.
 8 Therefore, as relevant to evaluating the value of the case, Baykeeper seeks: (a) injunctive relief in
 9 the form of an order requiring the Facility to implement pollution control measures and a monitoring
 10 program that comply with the Clean Water Act vis a vis compliance with California’s National
 11 Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges
 12 Associated with Industrial Activities (“General Permit”) regulating the discharge of polluted storm
 13 water from facilities conducting industrial activities, and thus the Clean Water Act; (b) an
 14 assessment of civil penalties of up to \$56,460.00 per day per violation, 33 U.S.C. § 1319(d), 40
 15 C.F.R. § 19.4; and (c) an award to Plaintiff of its reasonable costs of suit, including attorney,
 16 witness, expert, and consultant fees, as permitted by section 505(d) of the Clean Water Act, 33
 17 U.S.C. § 1365(d).

18 a. Costs Associated With Injunctive Relief

19 Plaintiff anticipates that the cost of implementing pollution control measures and a
 20 monitoring program that comply with the Clean Water Act and General Permit will range from
 21 \$500,000.00 to \$2,500,000.00. Global’s revenue from the past five years is approximately
 22 \$14,500,000.00.

23 b. Assessment of Civil Penalties

24 Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment
 25 of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean
 26 Water Act subjects the violator to penalties of up to \$56,460.00 per day per violation for violations
 27 occurring after November 2, 2015, where penalties are assessed on or after December 23, 2020.

1 While there is no formal floor for civil penalties, the Central District of California recently imposed
 2 \$3,700,000.00 in civil penalties in a similar enforcement action under the Clean Water Act. *See*
 3 *Inland Empire Waterkeeper v. Corona Clay Co.*, 13 F.4th 917, 922 (9th Cir. 2021).

4 Here, Plaintiff can/will establish that Defendant has violated the Clean Water Act and
 5 General Permit *daily* over the five (5) year statutory period, including violations for Defendant
 6 operating without correct permit coverage, operating without an updated pollution prevention plan,
 7 failure to implement best management practices, and failure to implement a monitoring program
 8 accruing up to \$103,039,500.00 per violation. Any assessment of civil penalties, therefore, has the
 9 potential to exceed \$400,000,000.00.

10 c. Attorney and Expert Fees and Costs

11 The Clean Water Act provides for recovery of attorney's fees, expert fees/costs, and out of
 12 pocket costs incurred by a prevailing party in citizen enforcement. 33 U.S.C. § 1365(d). Baykeeper
 13 estimates that, attorney's fees, expert fees, and costs through trial are likely to range from a
 14 minimum of \$1,000,000.00 to \$2,000,000.00.

15 **II. DEFENDANT'S STATEMENT**

16 Defendant's position is that it has not violated the Clean Water Act and the General Permit
 17 because it applied for and received NEC certification for the 2015 General Permit months several
 18 months before such application was even due. It has also maintained a condition of "No
 19 Exposure" at its facility. Defendant is in the process of sampling and testing various areas of its
 20 facility, such as a roof stack, its delivery area, and storm drain inlets and a parking/delivery it shares
 21 with other businesses. Defendant's plant is contained within a single building; its belief is that
 22 there are no parts of its facility exposed to stormwater – however sampling and testing is being
 23 done. As for Plaintiff's revenue estimate for Defendant of \$2.9 million/year, a recent economic
 24 study of the U.S. metal finishing industry indicates the average independent metal finishing
 25 business has an estimated annual profit before federal and state taxes of 6.2%, or \$179,800.
 26

27 (a) Defendant's Estimated Costs on Injunctive Relief

28 Defendant has not calculated the potential costs of Plaintiff receiving injunctive relief. But,
 if all profits were 100% applied to pay for \$500,000 to \$2,500,000 for pollution control measures

1 and monitoring programs as estimated by Plaintiff, the costs would be paid within 2.78 years to
2 13.90 years of profits before taxes.

3 (b) Defendant's Estimated Assessment of Civil Penalties

4 As noted, Defendant does not believe at this time the Court was asking for civil penalties as
5 damages in evaluating proportionality for discovery disputes. However, if annual profits before
6 taxes of \$179,800 were only applied to civil penalties of \$3.7 million to \$400 million, the penalties
7 could be paid within 20.6 years to 2,224.7 years.

8 (c) Defendant's Estimated Attorney and Expert Fees and Costs

9 If annual profits before taxes of \$179,800 were only applied to Plaintiff's estimated
10 minimum of \$1,000,000 to \$2,000,000, those costs could be paid within 5.56 years to 11.12 years.

11 Summing up, at an estimated annual profit of \$179,800, the estimates in Plaintiff's categories
12 could be paid within 29.3 years to 2,255.3 years.
13

14 Respectfully submitted:

15 Dated: December 6, 2021

/s/ Jesse C. Swanhuyser

Jesse C. Swanhuyser
Attorney for Plaintiff,
San Francisco Baykeeper

19 Dated: December 6, 2021

/s/ James R. Arnold

James R. Arnold
Attorney for Defendant,
Global Plating, Inc.

28